



OFFICE OF THE ATTORNEY GENERAL OF TEXAS  
AUSTIN

GERALD C. MANN  
ATTORNEY GENERAL

Honorable Walter Murchison  
County Attorney  
Haskell County  
Haskell, Texas

Dear Sir:

Opinion No. O-2537

Re: Moving buildings from one  
elementary district to another  
within a Rural High School  
District without consolidation  
or abolition.

We are in receipt of your letter of July 10, 1940,  
which reads in part as follows:

"I have received the above numbered opinion  
(O-2493) rendered by you in response to my request  
of June 25, 1940, and in this same connection I  
would submit another question to your department,  
the question being as follows, to wit:-

"Does the Board of Trustees of a Rural High  
School District, to wit, the Weinert Rural High  
School District, have the authority to remove  
the school building belonging to the Pleasant  
View Common School District, a district includ-  
ed in said Rural High School District, from  
said Common School District to Weinert to sup-  
plement the housing facilities now available  
there without abolishing the Pleasant View Com-  
mon School District by election or otherwise?

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"The further question then arises in the  
present case whether said Board of Trustees of  
the Weinert Rural High School District have the  
authority upon removal of said building or prior  
thereto, if they have the power to remove in the

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first place without abolition or consolidation of the elementary district, to tear down said elementary school building and use the materials or to attach it as an integral part to another building or buildings?"

In our Opinion No. O-2493 we ruled that under the provisions of Article 2922f, Revised Civil Statutes, 1925, an elementary school district within a rural high school district may be discontinued by the rural high school district trustees and consolidated with another district within the rural high school district for elementary purposes without the necessity of holding an election when the school within the elementary district fails to have an average daily attendance the preceding year of at least 20 pupils. We further ruled that after such discontinuance by the local board and consolidation of the district with another by the county school board it would be within the authority granted the local board of trustees to remove the building in the elementary district to supplement the housing facilities of the district as consolidated. In view of difficulties which might arise upon the complete dissolution of the rural high school district, we suggested, as a matter of precaution, the rural high school board should make some provision to protect and preserve any property rights which the original elementary district might have.

It has been suggested that the board of trustees of a rural high school district has the authority to do the acts set out in the additional questions, based upon an inference drawn from the court's qualification in *Chastain v. Meuldin* (T. C. A. 1930) 32 S. W. (2d) 235, quoted in our Opinion No. O-2493. The language referred to reads as follows:

"The point is made in appellees brief that the building may be returned or a new one erected whenever the necessity arises. The trustees of the grouped district have the management and control of the building in question, and we do not hold that they are without authority under proper safeguards for its return or replacement to remove it temporarily to the Grosvenor district. That question, however, is not presented by the pleadings or proof before us. The case as made by the record

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presents only the question of the power of the Grosvenor trustees to convert the school building of the Panther Creek district." (Underlining ours)

In the Chastain case the court was careful to point out that so long as the various elementary districts within the grouped rural high school district maintained their separate identity, the property and funds of the various districts should be maintained and not diverted from one district to another or to the grouped district. The court directly held:

"The trustees of the grouped district were invested with the power and charged with the duty of conducting schools and of administering all school property and funds of all the districts within the boundaries of the consolidated districts. But they did not have the right to divert property or funds of one district to another, or to the grouped district. This is clearly the holding in the McPhail case. It follows that they did not have the power to remove the school building of the Panther Creek district to the Grosvenor district, as that would have been a diversion of the property from its proper purpose and object. The only consolidation effected by the grouping was that of the funds collected from taxation for general maintenance. The ownership of such school buildings of the several districts remained the property of those districts and could not be divested or impaired by the trustees of the grouped district. We believe and so hold that in attempting to remove the school building the trustees were about to perform a wholly unauthorized act."

The trustees of a rural high school district, it is true, have control and management of the schools and buildings in the various districts making up the group, and under their general powers, the court recognized that circumstances might arise wherein it would be within their power to "temporarily" remove a building or other property from an existing elementary district. However, to extend the inference drawn from this dictum so as to authorize the board to do that which is suggested by the additional questions would be practically to nullify the direct holding of the court.

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We have examined the records before the court in that case and the facts now before us are practically the same as those which the court characterized as a conversion of the school building of the Panther Creek district.

With the same qualifications recognized by the court in *Chastain v. Mauldin*, supra, each of the foregoing questions are answered in the negative.

Yours very truly

ATTORNEY GENERAL OF TEXAS

By

*Cecil C. Cammack*  
Cecil C. Cammack  
Assistant

CCC:rw

APPROVED JUL 23, 1940

*George H. Mann*

ATTORNEY GENERAL OF TEXAS

